SO ORDERED.
SIGNED this 23rd day of May, 2017

THIS ORDER HAS BEEN ENTERED ON THE DOCKET.
PLEASE SEE DOCKET FOR ENTRY DATE.

Shelley D. Rucker
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF TENNESSEE
SOUTHERN DIVISION

In re:	
Bill Rae Jennings, Jr.,	No. 1:08-bk-15917-SDR
	Chapter 7
Debtor;	

ORDER AND MEMORANDUM ON TRUSTEE'S OBJECTION TO CLAIM NO. 4 OF PYOD, LLC

This matter came before the court on the objection filed by the chapter 7 trustee, William Foster, to the claim of PYOD, LLC, and PYOD's response. [Doc. No. 43-44]. Following a hearing on May 18, 2017, the court took the matter under advisement. The court has jurisdiction pursuant to 28 U.S.C. §§ 1334 and 157(b)(2)(B). Having considered the entire record in this case, including the arguments of counsel and stipulation of facts, the court makes the following findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure as made applicable to contested matters by Rule 9014.

The trustee has objected to PYOD's claim on the basis that any recovery is barred by the statute of limitations under applicable nonbankruptcy law. The basis of the trustee's objection is that the applicable statute of limitations ran before the case was reopened[1] or the proof of claim was filed. PYOD contends that the date to determine the expiration of the limitations period is the date of the commencement of the case. For the following reasons, the court finds that the limitations period has not expired.

The debtor commenced this case by filing a Chapter 7 petition on October 31, 2008. [Doc. No. 1]. In the original notice sent by the court in 2008, creditors were told "Please Do Not File a Proof of Claim Unless You Receive a Notice To Do So." [Doc. No. 9]. The notice went on to say, "There does not appear to be any property available to the trustee to pay creditors. *You therefore should not file a proof of claim at this time.* If it later appears that assets are available to pay creditors, you will be sent another notice telling you that you may file a proof of claim, and telling you the deadline for filing your proof of claim." *Id.* at 2 (Emphasis in original.). The case was determined to be a no-asset case in early 2010, and the trustee's report of no distribution was filed on January 24, 2010. [Doc No. 22].

The case was reopened on October 4, 2013, on the trustee's motion after additional assets were discovered. [Doc. No. 26]. The debtor had failed to disclose two pending lawsuits in which he was seeking a recovery. The first time creditors were sent notice that there were assets in the case and that a distribution was possible was November 17, 2015. At that time, creditors were told that they should file proofs of claim by February 16, 2016. [Doc. No. 39]. PYOD filed claim no. 4 on December 3, 2015, well before the deadline set by the court.

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[1] The trustee initially argued that the date of reopening the case, October 4, 2013, is the relevant date for determining whether the limitations period has run. The court has found no support for the contention that the date of reopening the case is the relevant date for determining whether the limitations period has run.

11 U.S.C. § 502(b)(1) provides that the court shall allow a claim in the amount filed, "except to the extent that . . . such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured." Under Tennessee law, the deadline to pursue an action for contract is six years after the cause of action accrued. Tenn. Code Ann. § 28-3-109(a)(3). The parties have stipulated that the cause of action accrued no earlier than October 16, 2007, the date the last payment was made on the account. They agree that the debt is a dischargeable, unsecured debt. They also agree that, had the bankruptcy not been filed, the statute of limitations would have run on October 16, 2013. The issue for the court is whether the running of the statute of limitations was suspended under Tennessee law during the period of time that bankruptcy law prohibited any collection action.

Section 108(c) of the Bankruptcy Code addresses the effect a bankruptcy filing has on limitations periods for causes of action against the debtor existing on the filing date. It provides that:

> Except as provided in section 524 of this title, if applicable nonbankruptcy law, an order entered in a nonbankruptcy proceeding, or an agreement fixes a period for commencing or continuing a civil action in a court other than a bankruptcy court on a claim against the debtor, or against an individual with respect to which such individual is protected under section 1201 or 1301 of this title, and such period has not expired before the date of the filing of the petition, then such period does not expire until the later of (1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or (2) 30 days after notice of the termination or expiration of the stay under section 362 . . . of this title, as the case may be, with respect to such claim.

11 U.S.C. § 108(c). This statute does not, in and of itself, suspend the running of the statute of limitations. "If the limitations period has expired and no other federal or state law mandates that the time period is suspended, then under Section 108(c)(2), a party has only thirty days after the lifting of the stay to act." *Weaver v. Hamrick*, 907 S.W.2d 385, 391 (Tenn. 1995) (citations

omitted). Section 108 would not have affected the deadline to commence an action in this case because October 7, 2013, was a date later than thirty days after notice of the expiration of the stay. The automatic stay expired upon entry of the discharge, which in this case was January 27, 2009. *See* 11 U.S.C. § 362(c)(2)(C). Notice of the discharge was sent on January 29, 2009. In order to allow PYOD to recover its claim, the court must find a basis in Tennessee law to extend the deadline to bring the claim.

The parties agree that PYOD's claim had not expired when the case was filed. Tenn. Code Ann. § 28-1-109 provides that, "When the commencement of an action is stayed by injunction, the time of the continuance of the injunction is not to be counted." *See also McCullough v. Vaughn*, No. M2016-01458-COA-R3-CV, 2017 WL 1536477, at *5 (Tenn. Ct. App. Apr. 27, 2017) (noting that section 28-1-109 "expressly provides for the suspension of deadlines during the continuance of the [bankruptcy automatic stay] injunction" and that the time "the bankruptcy injunction was in effect is not to be counted in calculating" the remaining time left under the statute of limitations).

When the bankruptcy case was filed, the automatic stay imposed by 11 U.S.C. § 362(a) enjoined the commencement of a state court action. *See id.* at *5. Accordingly, the statute of limitations would not have run from the commencement of the case to the entry of the discharge order terminating the automatic stay, a period of approximately three months. In addition, when the automatic stay ended, a second bankruptcy injunction was imposed by section 524(a), the discharge injunction. *See* 11 U.S.C. § 524(a)(2) ("A discharge . . . operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor. . . ."). According to the express language of Tenn. Code Ann. § 28-1-109, the injunction imposed by section 524(a) also prevented the limitations period from running. By the court's calculation, five and a half years still remain for this creditor to commence an action to collect the debt. Because the statute of limitations has not expired, PYOD's claim is not time barred under the applicable state law. Because PYOD's claim is enforceable under applicable law, the trustee's objection is overruled and the claim filed in the amount of $29,634.31 is allowed. It is so ORDERED.

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